IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8234 OF 2004

Shantabai Mahadeo Kokane .. Petitioner.
Vs.
Anant Gangadhar Joshi & Anr. .. Respondents.

Mr.M.S.Lagu for the petitioner.
Mr.K.K.Malpathak for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 27TH OCTOBER, 2004

P.C.:

. Heard Mr.Lagu, learned counsel for the petitioner and Mr.Malpathak, learned counsel for the respondents.

2. Rule, returnable forthwith.

3. Mr.Malpathak, learned counsel waives service for the respondents. By consent of the parties taken up for final hearing.

4. This petition is directed against the order dated 27.7.2004 passed below Exhibit-31 by which the prayer of the petitioner-plaintiff for setting aside the order dated 15.4.2004 passed below

Exhibit-1 in R.C.S. No.479/2002 has been rejected. On 15.4.2004 the learned Judge passed the following order:

> . "Vide order passed below Exh.22, hearing of this matter is expedited. Pltf. filed her affidavit in examination in chief on 11.3.2004. However, today she remain absent before court & failed availed herself to cross examination. No application on her behalf. Hence her evidence is dispensed with & matter is proceed further as per law. The deft. to lead his evidence".

5. The plaintiff, who is 84 years old filed an application for setting aside the order dated 15.4.2004 on the ground that on the day on which she was required to appear in the court for her cross examination, she could not do so since she was not keeping well. In support of her illness, she examined Dr.Ujwal, who issued the medical certificate. The learned Judge disbelieved the doctor, merely because she did not file patient register. Keeping in view the overall facts and circumstances of the case and in particular the age

of the plaintiff, in my opinion, the learned Judge ought to have given one more opportunity to the petitioner. I am satisfied that the interest of justice would be met by allowing the petitioner to present himself for cross examination. The learned advocate for the respondent has not seriously opposed the petition. The petition is allowed. The orders dated 27.7.2004 and 15.4.2004 passed below Exhibit-31 and Exhibit-1 respectively are quashed and set aside. The plaintiff to appear before the court on a date fixed for her cross examination.

. The petition is allowed.

. Rule is disposed of in the aforesaid terms.

(D.B.Bhosale, J.)